

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RECEIVED

2005 DEC 22 P 2: 54

DEBRA E. HANCOCK, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

ROBERT L. MCCRAY
PLAINTIFF

Vs.

)))))))))

CIVIL ACTION NO:2:05-CV-887-F

**PRISON HEALTH SERVICES,et al.,
DEFENDANT(S),**

MOTION FOR APPOINTMENT OF COUNSEL

The Plaintiff, Robert L. McCray, in *proper persona*, moves this Honorable Court, pursuant to Title 28 U.S.C. § 1915(d) (1996) 18 U.S.C. 3006(A) (1996) for appointment of counsel in the above styled cause as grounds herein would show:

1. The plaintiff filed a Civil Right's Complaint, Title 42 U.S.C. 1983, and a Motion to Proceed in Forma Papupers, on the 10th. day of November, 2005.

2.This Court, by Order, granted the plaintiff leave to proceed as an indigent on the 21st.day of October, 2005.

3.Plaintiff request appointment of counsel in this
casues due to his lack of any legal training in the
arts of juris, the complexity of the issues, and the

need for professional investigation and representation.

4. That in the interest of justice, a full and fair hearing on the merits, and due process, this court may appoint plaintiff counsel.

The eleventh circuit in Wahl V. McLver, 773 F.3d. 1174 (11th. Cir. 1985); accord, Lopez V. Reyes, 692 F.2d. 15, 17 (5th.Cir. 1982); Branch V. Cole, 686 F.2d. 265 (5th.Cir. 1982) has held that "generally speaking no right to counsel exists in § 1983 actions." In Hardwick V. Ault, 517 F.2d. 295, 298 (5th. Cir. 1975), however, later decisions of this court appointments of counsel make clear that the words "generally speaking" contain an important limitation on *Hardwick's "no right"*

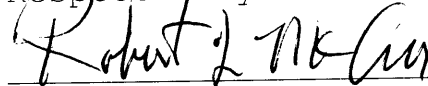
language. Write V. Dallas County Sheriff's Dept., 660 F.2d. (5th.Crim. 1981); Knight V. Watkins, 616 F.2d. 795, 799 (5th.Cir. 1980). Other circuits have also recognized that appointment of counsel should be made under the authority of 28 U.S.C. 1915(d) if cases meet the stated threshold requirements. see Stinger V. Rowe, 616 F.2d. 993 (7th.Cir. 1989), or when exceptional circumstances are present.

Aldabe V. Aldabe, 616 F.2d. 1089 (9th. Cir. 1980) see also, Ray V. Robinson, 640 F.2d. 474 (3rd.Cir. 1981); Tabron V. Grace, 6F.3d. 147 (3rd.Cir. 1993) cert

denied 114 S.Ct. 1306 (1994); cf Lucero V. Gunter, 52 F.3d. 874 (10th. Cir. 1995).

Plaintiff asserts his complaint has potential merit although he is unlettered in the law and arts of *juris* and that it would be a service to the court and the parties for the court to appoint counsel to explain the applicable legal principles to the complaint and limit litigation to potentially meritorious issues. Additionally, appointment of counsel would provide the inmate plaintiff with an opportunity to obtain representation equally qualifed with the professional counsel provided by the state for the defendant.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Robert L. McCray", written over a horizontal line.


Robert L. McCray

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to the below listed parties by placing the same in a pre-paid postage and properly addressed envelope and depositing the same in the U.S.Mail on this the 19th day of December. 19 2005.

SERVICE TO: Debra P. Hackett (Clerk)
Middle District of Alabama
United States Courthouse
15 Lee Street
Montgomery, Alabama. 36104

OFFICE OF THE ATTORNEY GENERAL
TROY KING
11 SOUTH UNION STREET
MONTGOMERY, AL. 36130

SUBMITTED BY

Robert L. McCray (pro-se)
A.I.S#167644/G-5-27-B
STATON COR.FAC.
P.O.BOX #56
ELMORE, ALABAMA. 36025-0056

The aforementioned after making themselves known to me
a Notary Public for the said County of Elmore, Alabama
did after being sworn and subscribed to before me and "I"
placing my official seal this 19th day of
December 2005

SEAL

Notary Public Jefere Pearson
My Commission Expires 1-22-08

Robert L. McCray
Robert L. McCray (pro-se)
A.I.S#167644/G-5-27-B
STATON COR.FAC.
P.O.BOX #56
ELMORE, ALABAMA.36025-0056